

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Shorter, Orrville, Selma, and Birmingham,)
Alabama))

MB Docket No. 04-201

RM-10972

RM-11103

MEMORANDUM OPINION AND ORDER

Adopted: January 18, 2006

Released: January 20, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a Petition for Reconsideration of a *Report and Order* in this proceeding filed jointly by Scott Communications, Inc. and Alexander Broadcasting Co., Inc. (the "Joint Parties"); (2) a Request for Approval of Settlement and Expedited Action filed by the Joint Parties; and (3) a Request for Approval of Withdrawal filed by SSR Communications ("SSR").

BACKGROUND

2. At the request of SSR, the *Notice of Proposed Rule Making*² in this proceeding proposed the allotment of Channel 300A to Shorter, Alabama, as a first local service. In response to the *NPRM*, the Joint Parties filed a counterproposal,³ requesting the upgrade, reallocation, and change of community of license for Scott Communications' Station WJAM(FM) from Channel 300A at Orrville, Alabama, to Channel 300C3 at Shorter, Alabama, pursuant to the provisions of Section 1.420(i) of the Commission's rules.⁴ To prevent the removal of Orrville's sole local service, the Joint Parties proposed to reallocate and change the community of license of Alexander Broadcasting's Station WALX(FM) from Channel 265C2 at Selma, Alabama, to Channel 265C2 at Orrville, Alabama. Further, to accommodate the allotment of Channel 300C3 at Shorter, the Joint Parties proposed to downgrade Station WRAX(FM) from Channel 299C to Channel 299C0 at Birmingham, Alabama, with the consent of the licensee.

3. Although both proposals would provide a first local service to Shorter, SSR's proposal was preferred on a comparative basis. The *R&O* specifically found that the public interest would be better served by allotting Channel 300A to Shorter rather than reallocating Channel 300C3 to Shorter because the former would provide an additional transmission service.

¹ *Shorter, Orrville, Selma, and Birmingham, AL*, 20 FCC Rcd 8236 (MB 2005).

² *Shorter, AL*, 19 FCC Rcd 9233 (MB 2004) ("*NPRM*").

³ The Joint Parties' counterproposal was placed on *Public Notice* on October 20, 2004, Report No. 2677.

⁴ This rule permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.

4. On July 7, 2005, the Joint Parties filed a Request for Approval of Settlement and Expedited Action. SSR also filed a separate Request for Approval of Withdrawal. Under the terms of the settlement, SSR agreed to withdraw its proposal to allot Channel 300A at Shorter, Alabama, and its expression of interest in applying for Channel 300A at Shorter. The Joint parties state that they settled this case pursuant to the Commission's recently announced settlement window and this is a complete and rule-compliant settlement because a Notice of Proposed Rule Making has been released and the comment date fell on or before June 14, 2005.⁵

DISCUSSION

5. Consistent with the *Public Notice*⁶ announcing a 90-day settlement window for certain pending FM allotment proceedings, we will waive the provisions of Section 1.420(j) and grant the Joint Parties' Request for Approval of Settlement and SSR's Request for Approval of Withdrawal of its rulemaking petition. Because there are no other expressions of interest for Channel 300A at Shorter, will delete that allotment.

6. We will also grant the Joint Parties' counterproposal. First, we will upgrade, reallocate, and change the community of license for Station WJAM-FM from Channel 300A at Orrville, Alabama, to Channel 300C3 at Shorter, Alabama.⁷ This upgrade and reallocation meets the requirements for a station to change its community of license because (1) the proposed use of Channel 300C3 at Shorter is mutually exclusive with the current use of Channel 300A at Orrville; (2) Orrville will not be deprived of its only local service as Station WALX(FM) is simultaneously being reallocated from Selma to Orrville as a "back-fill" replacement service; and (3) the provision of a first local service at Shorter (pop. 355)⁸ under Priority 3 of the FM Allotment Priorities⁹ will result in a preferential arrangement of allotments over the retention of a seventh local service at Selma (pop. 20,512) under Priority 4.¹⁰ To ensure that local aural service is retained at Orrville, we will require, as we have in past cases,¹¹ that Station WJAM-FM may not commence operating at Shorter until Station WALX(FM) commences operations at Orrville.

7. Shorter is not located in an Urbanized Area, and the proposed 70 dBu contour of Station WJAM-FM will not encompass more than 50 percent of an Urbanized Area. Therefore, this relocation does not implicate the Commission's policy against migration of stations from rural to urban areas, and a *Tuck* showing is not required.¹² Further, the relocation of Station WJAM-FM will result in a gain of

⁵ The *NPRM* in this proceeding was released on May 28, 2004, and the comment date was July 19, 2004. See *Shorter, AL*, 19 FCC Rcd at 9233.

⁶ *Window Announced for Universal Settlements of Pending Rulemaking Proceedings to Amend FM Table of Allotments*, 20 FCC Rcd 10756 (MB 2005) ("*Public Notice*").

⁷ The reference coordinates for Channel 300C3 at Shorter are 32-21-49 NL and 85-59-48 WL.

⁸ Shorter is a community for allotment purposes. It is an incorporated community and listed in the U.S. Census. Shorter has its own mayor, city council members, city and court clerk, police department, fire department, post office, and zip code.

⁹ The FM allotment priorities are (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

¹⁰ See, e.g., *Corinth, Scotia, and Hudson Falls, NY*, 16 FCC Rcd 13305 (MMB 2001) (the totality of service improvements resulting from a proposed change of community proposal are taken into account when determining whether an allotment proposal should be approved); and *Chillicothe, Dublin, Hillsboro, and Marion, OH*, 20 FCC Rcd 6305 (MB 2005), *recon pending*.

¹¹ See, e.g., *Auburn, AL*, 18 FCC Rcd 10333 (MB 2003).

¹² *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

300,192 persons and a loss of 45,703 persons, for a net gain of 254,489. However, the population in the loss area will continue to remain well served with five or more reception services.

8. Second, we will reallocate and change the community of license for Station WALX(FM) from Selma, Alabama, to Orrville, Alabama.¹³ This reallocation meets the Commission's requirements because (1) the proposed use of Channel 265C2 at Orrville is mutually exclusive with the current use of Channel 265C2 at Selma; (2) Selma will not be deprived of its only local service as six other radio stations are licensed to Selma; and (3) as stated above, the provision of a first local service at Shorter under Priority 3 will result in a preferential arrangement of allotments over the retention of a seventh local service at Selma under Priority 4.

9. We recognize that the reallocation of Station WLAX(FM) from Selma to Orrville will result in a gain of 4,657 persons and a loss of 48,031 persons, for a net loss of 43,374 persons. However, the entire population in the loss area will continue to receive at least five other aural services and will thus remain well served.¹⁴ Finally, to accommodate the reallocation of Channel 300C3 to Shorter, we will downgrade and modify the license of Station WRAX(FM) at Birmingham, Alabama, from Channel 299C to Channel 299C0.¹⁵

10. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 20, 2006, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, for the communities listed below, as follows:

<u>Communities</u>	<u>-Channel Number</u>
Orrville, Alabama	265C2
Selma, Alabama	261C2, 278C2
Shorter, Alabama	300C3

11. IT IS FURTHER ORDERED, That pursuant to Section 316 of the Communications Act of 1934, as amended, the licenses for the stations listed below ARE MODIFIED to specify operation on channels and/or communities listed below, subject to the following conditions:

<u>Station</u>	<u>Community</u>	<u>Channel</u>
WJAM-FM	Shorter, AL	300C3
WALX-FM	Orrville, AL	265C2
WRAX(FM)	Birmingham, AL	299C0

- (a) Within 90 days of the effective date of this *Order*, the licensees shall submit to the Commission minor change applications for construction permits (Form 301);
- (b) Upon grant of the construction permits, program tests may be conducted in accordance with Section 73.1620;
- (c) Operating authority for Station WJAM-FM, Channel 300C3, at Shorter, Alabama, may not be granted until operations have been commenced by Station WALX(FM),

¹³ The reference coordinates for Channel 265C2 at Orrville are 32-20-42 NL and 86-55-02 WL.

¹⁴ See, e.g., *La Grange and Rollingwood, TX*, 10 FCC Rcd 3337 (1995).

¹⁵ The reference coordinates for channel 299C0 at Birmingham, AL, are 33-43-52 NL and 86-37-57 WL.

Channel 265C2, at Orrville, Alabama;

- (d) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

12. The Commission will send a copy of this *Memorandum Opinion and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

13. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change of community of license and/or upgrade. As a result of this proceeding, the licensees of Station WJAM-FM, Shorter, Alabama, and WALX(FM), Orrville, Alabama, are required to submit rulemaking fees in addition to the fees required for the applications to effect the changes in community of license and upgrade.

14. IT IS FURTHER ORDERED, That the Request for Approval of Settlement and Expedited Action filed by Scott Communications, Inc., and Alexander Broadcasting Co., Inc. and the Request for Approval of Withdrawal filed by SSR Communications ARE GRANTED.

15. IT IS FURTHER ORDERED, That the Counterproposal filed by Scott Communications, Inc. and Alexander Broadcasting, Co. IS GRANTED.

16. IT IS FURTHER ORDERED, That the Petition for Reconsideration filed by Scott Communications, Inc., and Alexander Broadcasting Co., Inc. IS DISMISSED AS MOOT.

17. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

18. For further information concerning this proceeding, contact Andrew J. Rhodes, Audio Division, Media Bureau (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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